Congress of the United States

Washington, DC 20515

13-000-6507

June 11, 2013

Dr. Holly Stallworth
Designated Federal Officer for Clean Air Science Advisory Committee
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-4164

Dear Dr. Stallworth,

As the Senators and members of the House Energy and Commerce Committee and House Committee on Science, Space and Technology who represent Texas, we are submitting this letter of support for Dr. Michael E. Honeycutt, who is being considered for the Clean Air Scientific Advisory Committee at the United States Environmental Protection Agency (USEPA).

Dr. Honeycutt is the Director of the Toxicology Division of the Texas Commission on Environmental Quality (TCEQ). His responsibilities include overseeing health effects reviews of air permit applications, ambient air monitoring projects, and the reviews of human health risk assessments for hazardous waste sites. Dr. Honeycutt serves as a technical advisor for TCEQ leadership and staff on issues concerning air and water quality, as well as drinking water and soil contamination. He also serves as an expert witness in public and state legislative hearings, participates in public meetings, and has conducted hundreds of media interviews. Dr. Honeycutt is an adjunct professor at Texas A&M University, has published numerous articles in the peer-reviewed literature, serves or has served on numerous external committees, and has provided invited testimony at Congressional hearings.

Dr. Honeycutt's team of scientists at the TCEQ is unparalleled at any other state environmental agency in the US, and Dr. Honeycutt is highly respected by environmental professionals inside and outside the agency. His approach is balanced, unbiased, and scientifically rigorous. He instituted a peer-review process at the TCEQ for the development of the state's effects screening levels and is continually looking for ways to improve the scientific bases of environmental decision making at TCEQ and other agencies. Dr. Honeycutt possesses impeccable character, proven leadership skills, and extensive experience dealing with complex environmental issues. He has demonstrated himself to be a dedicated steward for public health and the environment, and his expertise has been of immense benefit not only to Texas, but to all of Region 6.

In conclusion, we believe Dr. Honeycutt would make an exceptional committee member and strongly support his nomination.

Thank you for the opportunity to submit these comments.

Very respectfully,

Pete Olson

Pete Olson (TX-22)
Member of Congress

Lamar Smith

Lamar Smith (TX-21)
Chairman, Committee on Science
Space and Technology

Joe Barton (TX-06)
Chairman Emeritus
Energy and Commerce Committee

Ralph Hall (TX-04)
Member of Congress

Randy Neugebauer (TX-19)
Member of Congress

Randy Weber (TX-14)
Member of Congress

John Cornyn
United States Senator

Ted Cruz
United States Senator

14-000-2387

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 4 2013

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Ted Cruz
United States Senate
Washington, DC 20510

Dear Senator Cruz:

On December 11, 2013, the U.S. Environmental Protection Agency will announce the five winners of the 2013 Presidential Green Chemistry Challenge Awards. We are pleased to inform you that one of your constituents, Life Technologies Corporation of Austin, Texas, will receive an award. Life Technologies will be recognized for developing a more sustainable way to make reagents for genetic testing. Please join me in congratulating Life Technologies Corporation on its accomplishment and use of creative green chemistry solutions to produce human health and environmental benefits that we will all enjoy.

The Presidential Green Chemistry Challenge Program is a voluntary partnership between the EPA, chemical industry, and broader scientific community. The annual awards recognize outstanding innovations in green chemistry that are scientifically, environmentally, and economically beneficial. The results of this national competition are impressive; since 1996, the 93 award-winning technologies have eliminated the use and generation of billions of pounds of toxic substances, while saving resources and lowering costs.

This year's winning technologies offer dramatic benefits to human health and the environment compared to traditional technologies. These technologies not only are on the cutting edge of scientific innovation, but also are economically viable, even preferable. Some of the technologies have already achieved market entry and have the potential to realize significant economic benefit. Details are available on the program's website at www2.epa.gov/green-chemistry.

If you have further questions, please contact me, or your staff may contact Mr. Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753 or kaiser.sven-erik@epa.gov.

Sincerely,

James J. Jones
Assistant Administrator

OAR-14-000-5892

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 21 2014

OFFICE OF
AIR AND RADIATION

The Honorable Ted Cruz
United States Senate
Washington, D.C. 20510

Dear Senator Cruz:

On behalf of the U.S. Environmental Protection Agency, it is my pleasure to inform you that Central Texas Clean Air Coalition, located in Austin, Texas, has been selected for a Clean Air Excellence Award for their project Regional 8-Hour Ozone Flex Planning. We received almost 70 applications, and this project was chosen by the EPA's Office of Air and Radiation for its impact, innovation and replicability.

We would like to invite you to attend the 2014 Clean Air Excellence Awards Ceremony, which will be held on the evening of Wednesday, April 2, 2014, from 5:30 pm to 7:30 pm at the Crowne Plaza Hotel in Crystal City, Virginia. Along with others, I will be presenting the awards.

The Clean Air Excellence Awards Program recognizes and honors outstanding and innovative efforts to achieve cleaner air. The program was recommended to the EPA by the Clean Air Act Advisory Committee, which advises the EPA on policy issues related to the Clean Air Act.

We hope you will be able to join us in congratulating the winners from your state for their innovative projects that are helping us to achieve cleaner air. If you have any questions, please contact me or your staff may contact Jenny Craig of my staff at (202) 564-1674 or craig.jeneva@epa.gov.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

14-000-6293

TED CRUZ
TEXAS

COMMITTEES:
COMMERCE
JUDICIARY
ARMED SERVICES
RULES AND ADMINISTRATION
AGING

United States Senate

WASHINGTON, DC 20510

March 6, 2014

RESPECTFULLY REFERRED:

Environmental Protection Agency
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Avenue NW Room 3426 Arn
Washington, DC 20460-0001

Dear Sir or Madam:

The attached communication was forwarded to my Senate office by Mr. . Ex. 6 concerned about a matter that falls within your agency's jurisdiction. We would appreciate it if appropriate inquiries could be initiated on their behalf, and if a full response could be prepared for me to report to the constituent.

It would be very helpful if the attached were to accompany your response. In the event you require more information, please do not hesitate to contact my office at 512.916.5834 or by fax at 512.916.5839.

Thank you for your attention to this request.

PLEASE REPLY TO:

Office of Senator Ted Cruz
Attention: Susanna Sovran
300 E 8th St Ste 961
Austin, Texas 78701-3226
512.916.5834
512.916.5839

Sincerely,

Senator Ted Cruz

STC:SS

300 East 8th Street
Suite 961
Austin, TX 78701
512-916-5834

10440 North Central Expressway
Suite 1160
Dallas, TX 75231
214-361-3500

1919 Smith Street
Suite 800
Houston, TX 77002
713-653-3450

3133 General Hudnell Drive
Suite 120
San Antonio, TX 78226
210-340-2885

Dirksen Senate Office Building
Suite SD-B40B
Washington, DC 20510
202-224-5922

U.S. Senator Ted Cruz

United States Senator • Texas

The Information and Privacy Act Form

The Privacy Act requires your written consent before a government agency will release information to our office regarding your records. To better serve you, please complete this form and return it as indicated below. Please be aware that the person requesting assistance must sign this form.

I hereby authorize the office of SENATOR TED CRUZ to request on my behalf, pertinent to the Freedom of Information and Privacy Act of 1974, access to information concerning me, and to forward copies of my correspondence involving (Name of Agency) _____ _____. In addition, the office of SENATOR CRUZ is also authorized to see any materials that may be disclosed pertinent to that request.

NAME: _____ Ex. 6 _____

MAILING ADDRESS: _____ Ex. 6 _____ _____

~~Kaufman, TX 75142~~

HOME OF RECORD (service members only): _____

HOME PHONE #: _____ Ex. 6 _____ _____

WORK PHONE #: _____ Ex. 6 _____ _____

SOC SEC #: Ex. 6

VA CLAIM # (if applicable): _____

PASSPORT # (if applicable): _____

ALIEN REGISTRATION # (if applicable): _____

OTHER ID #: _____ (if applicable, please indicate tax year(s) and form #)

DATE OF BIRTH: _____ . Ex. 6 . _____ (mm/dd/yyyy)

*Have you requested assistance from any other Congressional office? If yes, which one and did you receive a final response? N/O

Ex. 6 — 7-18-14

(Signature) (Date)

USE THIS PAGE TO EXPLAIN YOUR PROBLEM TO THE SENATOR

Note: Because of security measures, mail is now irradiated, which can damage sensitive items such as cassette tapes, videos, CD's and DVD's. Fax, e-mail and web form are the quickest ways to forward your information.

INSTRUCTIONS:

Please write a brief letter outlining the nature of your problem and be as specific as possible. In particular, include the names of any public officials you have communicated with in the past and the dates those communications occurred. Also, please attach any relevant correspondence that you have initiated or received concerning your problem. You can either mail or FAX this completed form, your brief letter, and any other pertinent attachments to:

U.S. Senator Ted Cruz
961 J.J. Pickle Federal Building
300 E. 8th Street
Austin, Texas 78701
Fax: 512-916-5839

February 24, 2014

U.S.Senator Ted Cruz
961JJ. Pickle Federal Bldg.
300 E. 8th Street
Austin, TX. 78701

Dear Senator Cruz:

My wife and I own a large cow/calf ranch in Kaufman County. I am 73 years old and unable to ride or rope a sick animal which needs an antibiotic. Even if I were to hire outside help to do so, there is a risk of horse and rider getting seriously injured in the chase across very rough terrain. It is also a lot of stress on cow or calf.

I purchased a rifle which shoots a bio-bullet to administer the antibiotic. It is shot at an angle to the animal so as to go in under the skin. I recently called the supplier to reorder the antibiotic bullets -

Soledtech Animal Health
812 N.E.24th Street
Newcastle, Okla. 73065
1-800-687-6497

I was told that the E.P.A. stopped them from manufacturing this product. I really need these for my ranch and hope you do something to get the E.P.A. to release this restriction on the bio-bullets.

Thanks for your help and I hope Senator Cruz runs for President!

Sincerely,

E.L.

14-000-8057

PAT TOOMEY
CHAIRMAN

JAMES WALLNER
EXECUTIVE DIRECTOR

640-B HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
202-224-4254

United States Senate

SENATE STEERING COMMITTEE

April 3, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

We write to you today regarding our concerns about the Environmental Protection Agency's (EPA) proposed rule to significantly expand its permitting authority over American farmers, construction workers, miners, manufacturers and private landowners, among others, by unilaterally changing the definition of "waters of the United States" under the Clean Water Act. We believe that this proposal will negatively impact economic growth by adding an additional layer of red tape to countless activities that are already sufficiently regulated by state and local governments.

This proposed rule will do little to clarify the ambiguities of Clean Water Act regulation. In fact, the agency's proposed interpretation of "significant nexus" is vague enough to allow EPA to assert its jurisdiction over waters not previously regulated, rather than to curtail its jurisdiction, as the agency suggests. Furthermore, the rule continues to incorporate the Kennedy "sufficient nexus" test that arose out of *Rapanos v. United States* (547 U.S. 715 (2006)) without meaningfully addressing the Scalia test that also arose out of that ruling. Specifically, Justice Scalia called for jurisdictional waters to mean only *relatively permanent, standing or flowing bodies of water*, such as streams, rivers, lakes, and other bodies of water "forming geographic features."[1] This definition leads him to exclude "channels containing merely intermittent or ephemeral flow."[2] We feel there is no justification for EPA's failure to respond in detail to the equally important interpretation put forth by Justice Scalia.

We also take issue with EPA's reckless disregard for the science that will apparently underpin this ruling. The report, titled *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence,* has not been finalized, and Science Advisory Board peer review for the report is not yet complete. For EPA to propose a rule without

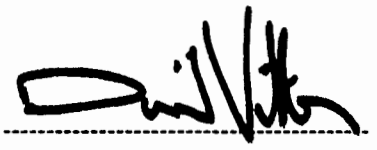
[1] 547 U.S. at 732-33, *emphasis added.*
[2] *Id.* At 733-34.

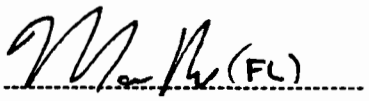
the supposed foundational scientific document firmly in place both violates the spirit of the Administrative Procedures Act, as well as OMB and agency circulars. It is our belief that EPA should withdraw this proposed ruling until such time as the Science Advisory Board completes its review of the *Report* and the *Report* is finalized. Failure to do so puts the legitimacy of the *Report*, and thus, the underlying science of the rule, in doubt, and creates the impression that the EPA intends to finalize this rule on its own whims, rather than on the validity of the science.

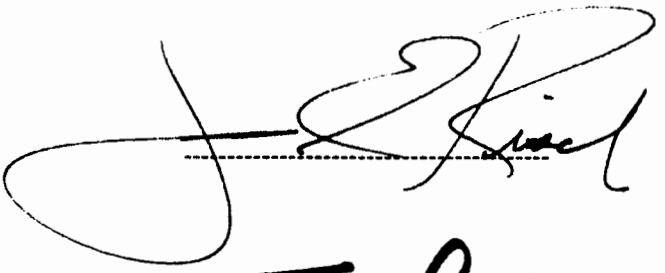
Finally, we understand that EPA is currently soliciting comments from the public on this proposal. Given the serious impact that this proposal will have on our constituents, if enacted, we request that you give all due consideration to the correspondence that you receive and extend the comment period to the full 180 days as provided by current law.

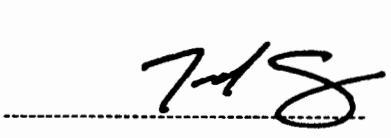
We appreciate your prompt attention to this matter.

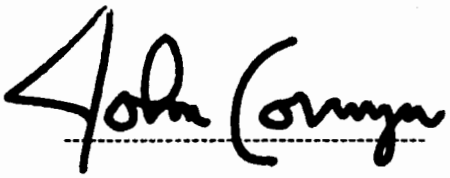
Sincerely,

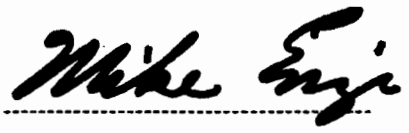


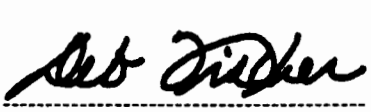


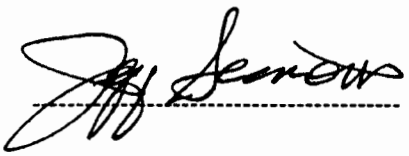


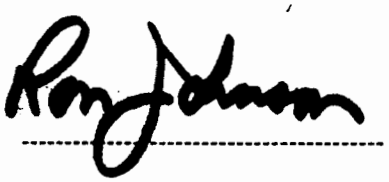


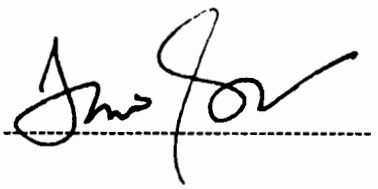












UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 14 2014

OFFICE OF WATER

The Honorable Ted Cruz
United States Senate
Washington, D.C. 20510

Dear Senator Cruz:

Thank you for your April 3, 2014, letter to the U.S. Environmental Protection Agency regarding the U.S. Department of the Army's and the EPA's proposed rulemaking to define the scope of the Clean Water Act consistent with science and the decisions of the Supreme Court. The agencies' current notice and comment rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

I appreciate your concern regarding the importance of working effectively with the public as the rulemaking process moves forward. The agencies are actively working to respond to this critical issue. In order to afford the public greater opportunity to benefit from the EPA Science Advisory Board's reports on the proposed jurisdictional rule and on the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," and to respond to requests from the public for additional time to provide comments on the proposed rule, the agencies extended the public comment period on the proposed rule to November 14, 2014.

Your letter expresses concerns regarding how the proposed rule incorporates decisions of the Supreme Court. The agencies based their proposed rule on the text of the Clean Water Act and relevant Supreme Court decisions on this important issue. As you note, the proposed rule is based significantly on these Supreme Court decisions, including Justice Kennedy's opinion in Rapanos v. United States, 547 U.S. 715 (2006), which lays out a "significant nexus" test for Clean Water Act jurisdiction. The agencies' proposed rule includes a proposed definition for "significant nexus," on which the agencies are seeking comments.

During the public comment period, the agencies are meeting with stakeholders across the country to facilitate their input on the proposed rule. We are talking with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. The EPA recently conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps have conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies recently completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the

agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy.

Thank you again for your letter. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact me if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836.

Sincerely,

Kenneth J. Kopocis

Kenneth J. Kopocis
Deputy Assistant Administrator

14-001-0101

United States Senate

WASHINGTON, DC 20510

May 22, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

It is our understanding that the Environmental Protection Agency (EPA) will be moving forward with a draft proposal to regulate greenhouse gases from existing power plants as soon as June 1st. Given the controversy and ongoing debate regarding the costs and benefits of this proposed regulation, we are respectfully writing that you do not move forward with the draft proposal at this time.

Energy that is cost-effective and drawn from diverse resources is indisputably a positive input to any economically prosperous society. In the United States, we have benefited from a diverse and abundant energy supply, one that includes coal and natural gas as well as nuclear and renewable energy. We have also prospered as a country because the costs of this energy have remained low, allowing businesses and families to use their income not to pay high electricity bills but to invest in their company or pay for college tuition. Unfortunately, while the overall benefits of any draft proposal are questionable, the economic and social costs of further regulating our electricity industry will undoubtedly increase costs for consumers and businesses. According to some estimates, such a proposal on existing power plants, when combined with other regulations already being put forth by the Administration, could cost 600,000 jobs and an aggregate decrease in gross domestic product by $2.23 trillion. Even more notably, it could cost a family of four more than $1,200 per year.

As public officials, we have a duty to weigh the costs of any policy, whether legislative or administrative, against the expected benefits. Unfortunately, we do not see a proper balance on the EPA's decision to move forward on regulating greenhouse gases from existing power plants and, for this reason, ask that you do not move forward with the draft proposal at this time.

Thank you for your consideration of our request.

Respectfully,

Ted S

Mike Enzi

Jeff Flake

John Cornyn

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 2 6 2014

OFFICE OF
AIR AND RADIATION

The Honorable Ted Cruz
United States Senate
Washington, D.C. 20510

Dear Senator Cruz:

Thank you for your letter of May 22, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy on the Clean Power Plan for Existing Power Plants, which was signed on June 2, 2014. The Administrator asked that I respond on her behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

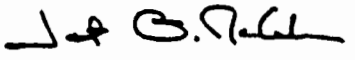
Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse, complex and interconnected.

We appreciate you providing your views about the effects of the proposal. As you know, we are currently seeking public comment on the proposal, and we encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule including costs and benefits. The public comment period will remain open for 120 days, until October 16, 2014. We have submitted your letter to the rulemaking docket, but you can submit additional comments via any one of these methods:

- Federal eRulemaking portal: http://www.regulations.gov. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR–2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at Lewis.josh@epa.gov or at (202) 564-2095.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

14-001-2702

THE WHITE HOUSE OFFICE
REFERRAL

July 08, 2014

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS:

DESCRIPTION OF INCOMING:

ID:	1142909
MEDIA:	LETTER
DOCUMENT DATE:	June 03, 2014
TO:	PRESIDENT OBAMA
FROM:	THE HONORABLE MITCH MCCONNELL UNITED STATES SENATE WASHINGTON, DC 20510
SUBJECT:	EXPRESSES CONCERN WITH THE PRESIDENT PROPOSED RULE FOR EXISTING POWER PLANTS EMISSIONS OF GREENHOUSE GASES

COMMENTS: _____

_____

_____

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT, ROOM 562, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500

THE WHITE HOUSE
DOCUMENT MANAGEMENT AND TRACKING WORKSHEET

DATE RECEIVED: June 26, 2014 **CASE ID: 1142909**

NAME OF CORRESPONDENT: THE HONORABLE MITCH MCCONNELL

SUBJECT: EXPRESSES CONCERN WITH THE PRESIDENT PROPOSED RULE FOR EXISTING POWER PLANTS EMISSIONS OF GREENHOUSE GASES

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION CODE	ACTION DATE	DISPOSITION TYPE RESPONSE	DISPOSITION CODE	DISPOSITION DATE COMPLETED
LEGISLATIVE AFFAIRS	KATIE FALLON	ORG	06/27/2014			

ACTION COMMENTS:

✓EPA R JUL 08 2014

ACTION COMMENTS:

ACTION COMMENTS:

ACTION COMMENTS:

ACTION COMMENTS:

COMMENTS: 41 ADDL SIGNEES

MEDIA TYPE: LETTER **USER CODE:**

ACTION CODES	DISPOSITION		
	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED C = CLOSED X = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES
REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590
SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 562, EEOB.

1142909

United States Senate
WASHINGTON, DC 20510

June 3, 2014

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

We write to express our concerns with your proposed rule for existing power plants emissions of greenhouse gases.

Our primary concern is that the rule as proposed will result in significant electricity rate increases and additional energy costs for consumers. These costs will, as always, fall most heavily on the elderly, the poor, and those on fixed incomes. In addition, these costs will damage families, businesses, and local institutions such as hospitals and schools. The U.S. Chamber of Commerce recently unveiled a study indicating that a plan of this type would increase America's electricity bills, decrease a family's disposable income, and result in job losses.

This proposed rule continues your Administration's effort to ensure that American families and businesses will pay more for electricity, an important goal emphasized during your initial campaign for President, and suffer reduced reliability as well. Removing coal as a power source from the generation portfolio – which is a direct and intended consequence of your Administration's rule – unnecessarily reduces reliability and market flexibility while increasing costs. As you are aware, low-income households spend a greater share of their paychecks on electricity and will bear the brunt of rate increases.

In your haste to drive coal and eventually natural gas from the generation portfolio, your Administration has disregarded whether EPA even has the legal authority under the Clean Air Act to move forward with this proposal, the dubious benefit of prematurely forcing the closure of even more base load power generation from America's electric generating fleet, and the obvious signal this past winter's cold snap sent regarding our continued need for reliable, affordable coal-fired generation.

In fact, your existing source proposal goes beyond the plain reading of the Clean Air Act, and it, like your Climate Action Plan, includes failed elements from the cap-and-trade program rejected by the United States Senate. You need only look back to June 2008 for a repudiation of that type of approach by the United States Senate. On June 2, 2008, the Senate debate began on S. 3036,

the Climate Security Act, a cap-and-trade bill, and ended in defeat on June 6, when the Senate refused to invoke cloture. Since that time, Majority Leader Harry Reid has avoided votes that would provide a record of the Senate's ongoing and consistent disapproval of your unilateral action.

Including emissions sources beyond the power plant fence as opposed to just those emissions sources inside the power plant fence creates a cap-and-trade program. As you noted in the wake of the initial failure of cap-and-trade, "There are many ways to skin a cat," and your Administration seems determined to accomplish administratively what they failed to achieve through the legislative process.

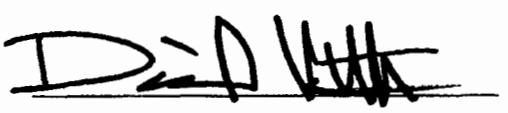
At a time when manufacturers are moving production from overseas to the U.S. and investing billions of dollars in the process, we are very concerned that an Administration with a poor management record decided to embark on a plan that will result in energy rationing, pitting power plants against refineries, chemical plants, and paper mills, for the ability to operate when coming up against EPA's emissions requirements. A management decision that eliminates access to abundant, affordable power puts U.S. manufacturing at a competitive disadvantage.

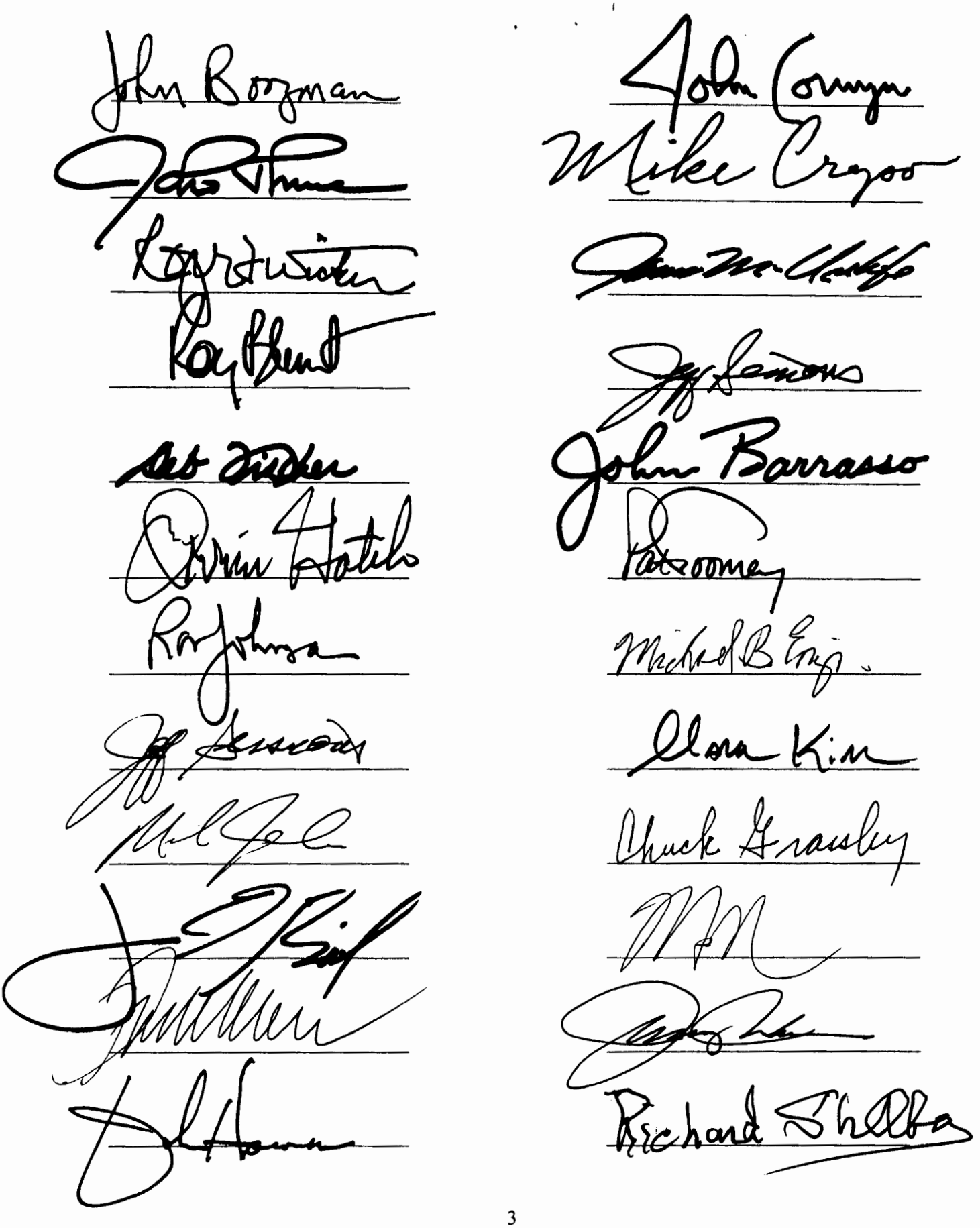
Moreover, there is substantial reason and historical experience to justify our belief that at the end of the rulemaking process, EPA will use its authority to constrain State preferences with respect to program design, potentially going so far as dictating policies that restrict when American families can do the laundry or run the air conditioning. Such impositions practically guarantee that costs, which will of course be passed along to ratepayers, will be maximized, the size and scope of the federal government will expand, and the role of the States in our system of cooperative federalism will continue to diminish.

Finally, we are concerned that there is almost no assessment of costs that will be imposed by this program. Again, if history is any guide, the costs imposed on U.S. businesses and families will be significant and far exceed EPA's own estimate. More disturbingly, the benefits that may result from this unilateral action – as measured by reductions in global average temperature or reduced sea level rise, or increase in sea ice, or any other measurement related to climate change that you choose – will be essentially zero. We know this because in 2009, your former EPA Administrator testified that "U.S. action alone would not impact world CO2 levels." If these assumptions are incorrect, please don't hesitate to provide us with the data that proves otherwise.

We strongly urge you to withdraw this rule.

Sincerely,




John Boozman
John Cornyn
Mike Crapo
Roy Blunt
Jeff Sessions
John Barrasso
Pat Toomey
Mark Kirk
Chuck Grassley
Richard Shelby

Lindsey Graham

Rob Portman

Lamar Alexander

Saxby Chambliss

Richard Shelby

Thad Cochran

Pat Roberts

Jeff Sessions

Jerry Moran

Dan Coats

Roy Blunt

Jim Inhofe

John Hoeven

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 18 2014

OFFICE OF
AIR AND RADIATION

The Honorable Ted Cruz
United States Senate
Washington, D.C. 20510

Dear Senator Cruz:

Thank you for your letter of June 3, 2014, to President Obama regarding the Clean Power Plan for Existing Power Plants that was signed by the U.S. Environmental Protection Agency Administrator Gina McCarthy on June 2, 2014, and published in the *Federal Register* on June 18, 2014. The President asked that I respond on his behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse, complex and interconnected.

We appreciate your views about the effects of the proposal. As you know, we are currently seeking public comment on the proposal, and we encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. The public comment period remains open and all comments submitted, regardless of method of submittal, will receive the same consideration. The public comment period will remain open for 120 days, until October 16, 2014. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

- Federal eRulemaking portal: http://www.regulations.gov. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR–2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

15-000-1316

TED CRUZ
TEXAS

COMMITTEES:
AGING
ARMED SERVICES
COMMERCE
JUDICIARY
RULES AND ADMINISTRATION

United States Senate

October 27, 2014

RESPECTFULLY REFERRED:

Arvin Ganesan
Associate Administrator
Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue NW, Room 3426 ARN
Washington, D.C. 20460

Dear Mr. Ganesan:

The attached communication was forwarded to my Senate office by Mr. William Rucker concerned about a matter that falls within your agency's jurisdiction. We would appreciate it if appropriate inquiries could be initiated on their behalf, and if a full response could be prepared for me to report to the constituent.

It would be very helpful if the attached were to accompany your response. In the event you require more information, please do not hesitate to contact my office at 512.916.5834 or by fax at 512.916.5839.

Thank you for your attention to this request.

PLEASE REPLY TO:

Office of Senator Ted Cruz
Attention: Susanna Sovran
300 E 8th St Ste 961
Austin, Texas 78701-3226
512.916.5834
512.916.5839

Enclosure(s)

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(512) 916-5834

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DALLAS, TX 75219
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(713) 718-3057

SUITE 1603
200 SOUTH 10TH STREET,
MCALLEN, TX 78501
(956) 686-7339

SUITE 950
9901 IH-10 WEST,
SAN ANTONIO, TX 78230
(210) 340-2885

SUITE 501
305 SOUTH BROADWAY,
TYLER, TX 75702
(903) 593-5130

SUITE SD-185
DIRKSEN BUILDING
WASHINGTON, DC 20510
(202) 224-5922

To the Honorable Senator Cruz
From William Rucker

October 23, 2014

Dear Senator Cruz;

This Report is provided from William Rucker, owner, and general manager of Texas Environmental Technologies ("TET") concerning collusion, corruption, and restraint of trade within the United States Environmental Protection Agency Office of Transportation and Air Quality, Ann Arbor Michigan (EPA). We also believe that the EPA by its actions has deprived William Rucker and Texas Environmental Technology of our 5th amendment right of "due process of law" be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property. No part of this letter is meant to be inflammatory, however, is meant to convey, our grave concerns regarding the EPA and Ms Chen its representative.

We are clearly a victim of retaliatory practices and because of the effort to damage our company the EPA representative has targeted our customers and held them to standards that are above the requirements of other laboratories. EPA has targeted TET and damaged several other U. S. small businesses and currently is carrying out a systematic effort to damage those companies.

Sir time is of the essence, every day this behavior is allowed to continue the amount of business damage increases and the loss of business is not recoverable.

We are asking for a two part settlement: 1. An EPA staff that is required to follow the CFR regulations and treats all manufactures fairly and supports the goals of the clean air act which include developing a partnership between business and the EPA. 2. A panel of industry representatives that are empowered with the ability to add civilian oversight to a government group that bullies small business and needs to be held accountable by those it governs.

Sir this group is out of control and is the exact reason US citizens are angry with government, they are damaging U.S. companies, hurting job growth, and ultimately targeting the very companies that are attempting to clean up an already difficult industry that is very heavily government regulated.

Thank you for your attention to this matter I eagerly await your help.

Regards,

William Rucker

A

Time line of reported Office of Mobile Source Emissions (EPA) Internal Corruption

1.1996

Texas Environmental Technologies LLC (TET) formed by William Rucker.

2. 1997

Mike Johnson (MJ) independent contracted as lab manager.

3. 2004

William Rucker (WR) hurt in motorcycle accident, lost leg hospitalized 6 months.

4. 2005

June MJ fired for theft of services, MJ stages break in of lab, Ft. police notified.
EPA notified that MJ reporting fraudulent test results for his company System Launch.

6. 2010

WR challenges EPA Enforcement rep. Jocelyn Adair on behalf of TET customer.
TET receives 1st ever "random audit" request from EPA "auditor" Amelie Isin.
Isin actually not auditor but an attorney for enforcement div EPA, denies knowing Adair.
November Isin, Schnare threaten criminal action if TET does supply all cust. records.
TET hires attorney for representation ultimately costing over 30K for defense.
Dec, Jan 2011 EPA assigns case to Meetu Kral.

7. 2011

August TET hired by Arkmos Engineering Utah for engine dev. and Testing.

8. 2012

EPA Spec. Agt. Criminal Division Tim Townsend interview WR for support of case against MJ.
Audit report never given to TET of audit conclusions by Dir. Cleophas Jackson (CJ)
EPA Chen e-mail sent disclosing request for correlation program request denied.

9. 2013

Jan. Arkmos COC requested, rejected by EPA CJ unless confirmed @ EPA lab.
July Grand Jury Indictment MJ for Wire fraud and making False statement to US.
Aug TET designated as Victim of above criminal actions of MJ by Justice Dept.
June-Sept EPA CJ request and conduct 2nd "audit of TET lab, no reason given.
Sept Request CJ result of audit.
Nov. Email CJ results of audit document.
Dec. 2014 Jan MJ pleads guilty to several counts.

10. 2014

Jan WR asked to testify in case by Errin Martin US Justice Attorney
Feb TET customer Road Rat requests carry-over on existing EPA approval.

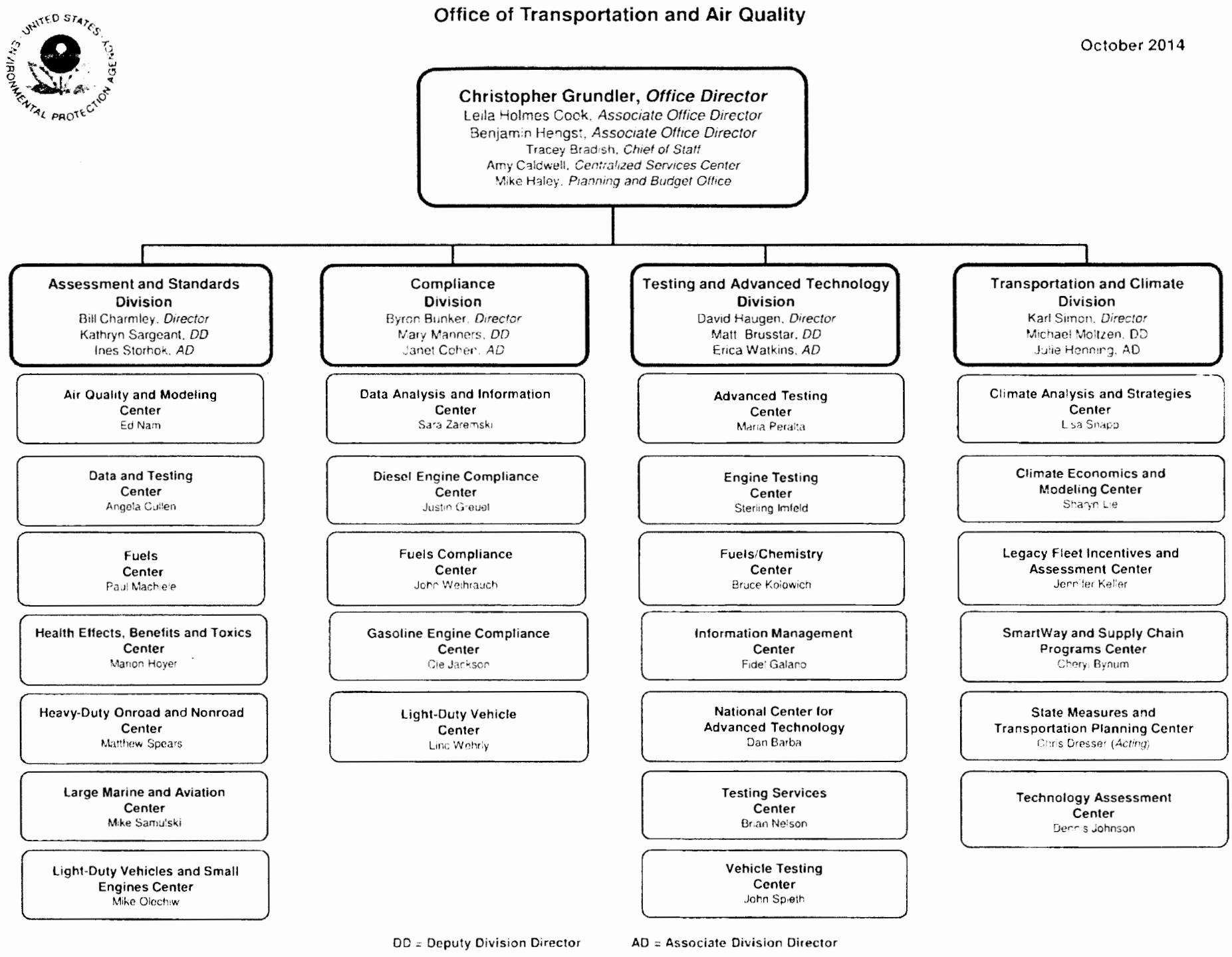
Mar. EPA Chen rejects carry-over request
Mar. EPA Emily Chen Director writes no confidence email to TET customer
Mar. TET requests explanation of false statements by EPA rep. Chen.
Mar. 2 TET customers attempt to fire TET due to No confidence EPA letter.
Mar EPA requires retest and customer agrees TET saves relationship temp.
Aug MJ sentence to 28 months Fed Pen.and monetary fine.
Aug Chen begins problematic behavior stating 2 stoke engine will ever pass regs.
Sept. photos taken per request showing 49cc carburetor with lube oil connection.
Sept. request to witness confirmation test at Lotus engineering.
Oct. 2nd Chen states to Road rat vehicle will not pass testing unless tested at Lotus.
Oct 2nd Chen also states Rucker partner in jail, Rucker lab did not pass audit, TET does not do mileage accumulation correctly and does not follow proper testing protocol. Chen also states unit tested will fail if this continues and if company once approval must test at Lotus. Chen threated to pull entire company COC

Oct 3rd e-mail sent to C J notifying that TET is contemplating legal action against Ms. Chen and EPA due to derogatory, inflammatory, misleading and restraint of trade incorrect remarks from Ms.Chen in both verbal and written correspondence EPA Management was notified that this type of behavior cannot be tolerated and must be corrected.

Oct.8th customer Road Rat notifies C. Jackson in letter to requests several options for problem correction.

Office of Transportation and Air Quality

October 2014



DD = Deputy Division Director AD = Associate Division Director

Dear Senator Cruz:

In February, 2014, EPA and agent Ms. Emily Chen ("Chen") representing Office of Transportation and Air Quality division of the EPA, rejected a request by HerChee/Bintelli Motorcycle operating as Road Rat Motor Company ("Road Rat"), and owner Justin Jackrel ("Jackrel") for approval to allow use of the test data supporting the EPA certificate of conformance of HerChee/Pitt Motorcycle ("HerChee") supporting the request of change of HerChee, which is the U.S. importer of Road Rat Motor.

The explanation for this request rejection was in an email dated March 4, 2014 from Chen of EPA to Margaret Goldstein ("Goldstein") of Harrison Wolf who represents HerChee, Pitt, and Road Rat/Bintelli

Stated in the following email:

"(1) we do not have the confidence on HerChee test data. You may look into the driving distances of each test to see if you agree with us;
(2) we do not have the confidence that the service accumulation were done correctly on the original EDV. Based on other information that we have acknowledged during our audit at the test lab;
(3) N/A
(4) while the HerChee EF was certified, we did not have resources to verify the test results, but we do now. Below are the related regulations that authorized the agency to call for a confirmatory test during application review and or call to test production vehicles to verify compliance of an engine family."

In the above statements, a condition of no confidence exists on the behalf of Chen and the EPA directed at TET who was the original testing laboratory for the HerChee test vehicle.

(1), no explanation was given as to why the EPA would state they do not have confidence in the TET test data and driving distances were done according to the CFR testing protocol.
(2) the service accumulation was never questioned by the EPA at the time of the original certification and TET was never asked for any additional information during "audits".
(3) No audit information was ever discussed.
(4) TET requested feedback as to whether there were any issues of interest or concern to the EPA during the TET audit we never received any answer from EPA.
(5)confirmatory testing has not ever been asked for on the original test vehicle from the EPA.

In March, 2014, TET notified Cleophas Jackson ("Jackson") via email that incorrect and improper statements were made by his subordinate Chen. In a subsequent phone call, Jackson and in-house attorney "Julian" spoke with Rucker in an effort to explain the meaning of "no confidence," and other items in the email. During the conversation Jackson agreed if another test program was run on the subject vehicle, new data would be accepted from TET and given every opportunity to provide approval of the vehicle COC.

Subsequent to the Jackson conversation both HerChee and Road Rat notified TET stating they no longer required TET as their test lab due to EPA's "no-confidence" email.

August, 2014, after a complete retest program an application was submitted to Chen, statements were made to Harrison Wolf that included a 49 cc, two stroke motorcycle would not pass environmental standards unless tested at Lotus Engineering one of the EPA contracted benchmark test labs. It was at this time the problematic behavior of Chen began to escalate with no explanation.Then a test of motorcycle at Lotus Engineering ("Lotus") was ordered by Chen.

The Road Rat motorcycle (the "Motorcycle") began testing October, 2014, and early it was noted that motorcycle had been checked in by Lotus personnel. During the preconditioning run the Motorcycle's engine locked up due to lack of lubrication. The EPA continued testing and during the final

test, problems arose with the lab equipment. The final test was aborted due to questionable conditions at Lotus Engineering. Questionable issues have been discovered, including, that Lotus was testing incorrectly for some time and that the EPA was aware of discrepancies at Lotus. Subsequently, other questions have been raised to the EPA concerning the issues at Lotus. However, Chen has discounted any concerns about the improper procedures and problematic equipment at Lotus.

During Road Rat testing Chen took Road Rat owner aside and made several comments about TET. These statements were relayed to Rucker.

Statements attributed from Chen included:
1. Mr. Rucker's partner is in the federal penitentiary;
2. Mr. Rucker's audit was unsatisfactory and problems were found;
3. TET does not do mileage accumulation properly;
4. TET does not do proper testing or scheduled maintenance on customer's vehicles; and
5. Road Rat Motorcycles tested at TET would not ever pass, but if Road Rat repeated the 6000 km testing program at Lotus they would not require confirmatory testing, and Lotus testing is superior to TET.

Rucker notified Jackson of the EPA, on October 3, 2014, that the statements were not true, derogatory, inflammatory, misleading, and incorrect. That such statements were in similar to the comments Chen had writing earlier in the year. Chen's statements showed restraint of trade and corruption on EPA part. Mr. Jackson was asked to contact Rucker before 5:00 p.m., October 6, 2014 and discuss the issues. To date there has been no contact from the EPA concerning the October 3, 2014 communication.

TET has documents that span back to 2005 notifying the EPA of fraudulent behavior of one of its previous associate Michael Johnson ("Johnson") who now is in a federal penitentiary. Rucker supported the EPA investigation with evidence and consulting to support the charges against Johnson. Rucker also has correspondence in support of individual retaliatory audits from EPA personnel who on both occasions were on a "witch-hunt," against TET. Rucker has supported the EPA requests of both audits and requested audit final results. Rucker and TET both were designated victims in the fraudulent behavior of Johnson, as a result of the EPA investigation. TET has made every effort to support the EPA in its efforts to stop Johnson's fraudulent acts. Chen has made additional statements to others in the industry that the EPA believes that TET was in collusion with Johnson in the fraudulent actions.

We need your help Senator Cruz. This government agency is out of control. This behavior clearly is an issue of restraint of trade and possible collusion between EPA and its laboratories. The statements and continual harassment of TET customer base, and our laboratory have to be corrected. We continue supporting the EPA and its effort to prosecute fraudulent companies. It is TET's believe that they are a victim of retaliatory business practices, derogatory statements and continual harassment of their customers. We have documents that support the contention in this statement from 2005 to present.

Thank you for your attention to this matter, we appreciate your help.

William Rucker

See Attachment A, B

B Contact List

William Rucker
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Meetu Kaul
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Amelie Isin
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734 995 2544

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http://jktechnologies.net/
Jonathan and Lois

Additional Contacts

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Jocelyn Adair	EPA Enforcement
Andrew Loll	EPA Consultant
Alan Stanral	EPA Consultant
David W Schnare	EPA Consultant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 05 2015

OFFICE OF
AIR AND RADIATION

The Honorable Ted Cruz
United States Senate
300 E 8th Street, Suite 961
Austin, Texas 78701-3226

Attention: Susanna Sovran

Dear Senator Cruz:

Thank you for your October 27, 2014, letter on behalf of your constituent, Mr. William Rucker, regarding his questions about the U.S. Environmental Protection Agency's requirements for testing of highway motorcycles.

We received a similar inquiry from the United States Small Business Administration Ombudsman (SBA). As described in more detail in the enclosed response from Byron Bunker, Director of the Compliance Division in the Office of Transportation and Air Quality, to the SBA, we believe that Mr. Rucker's concerns result from a misunderstanding of the Agency's standard processes associated with certifying that vehicles meet EPA emission standards. My staff have had several communications with Mr. Rucker to attempt to explain the confirmatory testing program, and other aspects of the program, that reflect our commitment to ensure that every engine or vehicle will meet applicable standards.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at haman.patricia@epa.gov or (202) 564-2806.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

Enclosure

14-001-4924

United States Senate

WASHINGTON, DC 20510

September 11, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

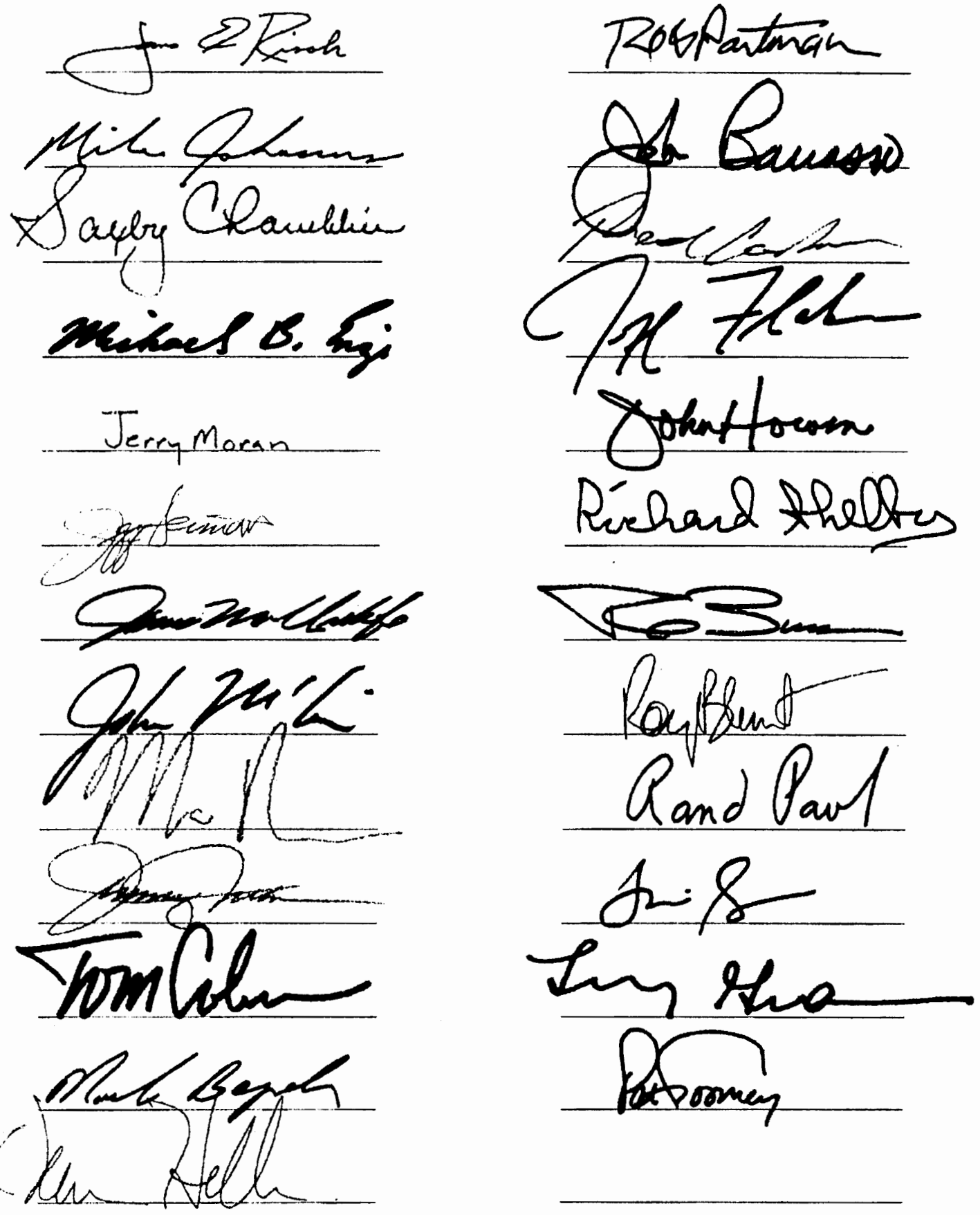
We are writing to request that the Environmental Protection Agency (EPA) provide a 60 day extension of the comment period for the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units." While we appreciate EPA granting an initial 120 day comment period, the complexity and magnitude of the proposed rule necessitates an extension. This extension is critical to ensure that state regulatory agencies and other stakeholders have adequate time to fully analyze and comment on the proposal. It is also important to note that the challenge is not only one of commenting on the complexity and sweeping scope of the rule, but also providing an opportunity to digest more than 600 supporting documents released by EPA in support of this proposal.

The proposed rule regulates or affects the generation, transmission, and use of electricity in every corner of this country. States and stakeholders must have time to fully analyze and assess the sweeping impacts that the proposal will have on our nation's energy system, including dispatch of generation and end-use energy efficiency. In light of the broad energy impacts of the proposed rule, state environmental agencies must coordinate their comments across multiple state agencies and stakeholders, including public utility commissions, regional transmission organizations, and transmission and reliability experts, just to name a few. The proposed rule requires a thorough evaluation of intra- and inter-state, regional, and in some cases international energy generation and transmission so that states and utilities can provide the most detailed assessments on how to meet the targets while maintaining reliability in the grid. This level of coordination to comment on an EPA rule is unprecedented, extraordinary, and extremely time consuming.

It is also important to note that the proposed rule imposes a heavy burden on the states during the rulemaking process. If the states want to adjust their statewide emission rate target assigned to them by EPA, they must provide their supporting documentation for the adjustment during the comment period. The EPA proposal provides no mechanism for adjusting the state emission rate targets once they are adopted based on the four building blocks. So the states need enough time to digest the rule, fully understand it, and then collect the data and justification on why their specific target may need to be adjusted, and why the assumptions of the building blocks may not apply to their states. This cannot be adequately accomplished in only 120 days.

Thank you for your consideration of this request.

Sincerely,



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 16, 2014

OFFICE OF
AIR AND RADIATION

The Honorable Ted Cruz
United States Senate
Washington, D.C. 20510

Dear Senator Cruz:

Thank you for your letter of September 11, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy requesting an extension of the comment period for the proposed Clean Power Plan, which was signed on June 2, 2014, and published in the Federal Register on June 18, 2014. The Administrator asked that I respond on her behalf.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country, to learn more about what programs are already working to reduce carbon pollution. In addition, during the week of July 29, the EPA conducted eight full days of public hearings in four cities. Over 1,300 people shared their thoughts and ideas about the proposal and over 1,400 additional people attended those hearings.

These hearings and these meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse and interconnected.

Recognizing that the proposal asks for comment on a range of issues, some of which are complex, the EPA initially proposed this rule with a 120-day comment period. The EPA has decided to extend the comment period by an additional 45 days, in order to get the best possible advice and data to inform a final rule.

The public comment period will now remain open until December 1, 2014. We encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

Federal eRulemaking portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.

- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR–2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

15-000-1173

United States Senate

WASHINGTON, DC 20510

October 23, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1300 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable John M. McHugh
Secretary of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

Re: Proposed Rule to Define "Waters of the United States"
Docket ID No. EPA-HW-OW-2011-0880

Dear Administrator McCarthy and Secretary McHugh,

Despite numerous requests for the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) to withdraw the proposed "waters of the United States" rule, the Administration has shown it intends to pursue this unprecedented executive overreach, regardless of the consequences to the economy and to Americans' property rights. The proposed rule would provide EPA and the Corps (as well as litigious environmental groups) with the power to dictate the land use decisions of homeowners, small businesses, and local communities throughout the United States. With few exceptions, it would give the agencies virtually unlimited regulatory authority over all state and local waters, no matter how remote or isolated such waters may be from truly navigable waters. The proposed rule thus usurps legislative authority and Congress's decision to predicate Clean Water Act jurisdiction on the law's foundational term, "navigable waters."

Because the proposed "waters of the United States" rule displaces state and local officials in their primary role in environmental protection, it is certain to have a damaging effect on economic growth. Increased permitting costs, abandoned development projects, and the prospect of litigation resulting from the proposed rule will slow job-creation across the country. Similar concerns led the Small Business Administration's Office of Advocacy (SBA) to recently call for the withdrawal of the proposed rule. As SBA observed, the proposed rule will result in a "direct and potentially costly impact on small businesses," and the "[t]he limited economic analysis which [EPA and the Corps] submitted with the rule provides ample evidence of a potentially significant economic impact."[1] We join SBA and continue to urge EPA and the Corps to withdraw the proposed rule.

Undoubtedly, there is a disconnect between regulatory reality and the Administration's utopian view of the proposed "waters of the United States" rule. We believe this reflects the EPA's and the Corps' refusal to listen to the thousands of Americans who have asked that the proposed rule be immediately withdrawn. Indeed, there have been several examples of bias against the proposed rule's critics. For the record, we note that the Administration has manipulated this rulemaking in ways that appear to be designed to prejudge the outcome:

[1] Letter from SBA to the Hon. Gina McCarthy and Maj. Gen. John Peabody re: Definition of "Waters of the United States" Under the Clean Water Act (Oct. 1, 2014), available at http://www.sba.gov/sites/default/files/Final_WOTUS%20Comment%20Letter.pdf.

Bias Factor #1: The Obama Administration Claims That the Proposed "Waters of the United States" Rule Responds to Prior Requests for a Clean Water Act Rulemaking.

EPA has repeatedly claimed that the proposed "waters of the United States" rule responds to various requests for the agency to clarify the scope of Clean Water Act jurisdiction. Likewise, the Administration stated last month that the proposed rule "is responsive to calls for rulemaking from Congress, industry, and community stakeholders as well as decisions of the U.S. Supreme Court."[2]

Such assertions are wholly misleading. A request for a regulatory clarification does not provide a license to run roughshod over the property rights of millions of Americans. Yet the Obama Administration has used prior rulemaking requests as an excuse to unilaterally advance a regulatory agenda that defies the jurisdictional limits established by Congress when it enacted the Clean Water Act in 1972.

In fact, the proposed rule would harm the very landowners, small businesses, and municipalities that expressed interest in working with EPA and the Corps to address Clean Water Act jurisdictional issues. Thus, rather than respond to requests for a rulemaking, the proposed rule serves as an example for why so few Americans trust EPA.

Bias Factor #2: The Obama Administration Insinuates That Opposition to the Proposed Rule Is Equivalent to Opposition to Clean Water.

When EPA Administrator Gina McCarthy announced the proposed "waters of the United States" rule last March, she professed that the proposed rule "clarifies which waters are protected, and which waters are not."[3] Similarly, EPA's Office of Water has suggested that those who "choose clean water" should support the proposed rule.[4]

These statements insinuate that the proposed rule's critics oppose clean water. This is an insulting ploy that belies the numerous efforts made in recent years by agriculture, industry, and local officials to improve water quality throughout the country. It ignores the fact that nonfederal waterbodies are subject to local and state water quality regulations. Moreover, the Clean Water Act's emphasis that "[i]t is the policy of the Congress to recognize, preserve, and protect *the primary responsibilities and rights of States* to prevent, reduce, and eliminate pollution" negates the canard that choosing clean water requires acceding to unlimited federal regulatory authority.[5]

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[2] Executive Office of the President, Office of Management and Budget, Statement of Administration Policy re: H.R. 5078 (Sept. 8, 2014).

[3] U.S. Environmental Protection Agency, *EPA Administrator Gina McCarthy Gives an Overview of EPA's Clean Water Act Rule Proposal*, YOUTUBE (Mar. 25. 2014), http://www.youtube.com/watch?v=ow-n8zZuDYc.

[4] Travis Loop, *Do You Choose Clean Water?*, GREENVERSATIONS: AN OFFICIAL BLOG OF THE U.S. EPA Sept. 9, 2014), http://blog.epa.gov/blog/2014/09/do-you-choose-clean-water/.

[5] Federal Water Pollution Control Act § 101, 33 U.S.C. § 1251 (emphasis added).

Bias Factor #3: **EPA Has Attempted to Delegitimize Questions and Concerns Surrounding the Proposed Rule.**

Administrator McCarthy has described certain questions regarding the proposed rule as "ludicrous" and "silly."[6] Stakeholders have also observed how EPA officials have responded to concerns over the proposed rule with misrepresentations and a "knock on their intelligence."[7]

EPA's disparaging of the proposed rule's critics serves no one. If EPA believes concerns with the proposed rule are unwarranted, the appropriate course of action would be for the agency to respond formally in the context of the notice and comment procedures accompanying the current rulemaking. Belittling the proposal's critics only furthers the impression that EPA has predetermined the outcome of the "waters of the United States" rulemaking.

Bias Factor #4: **EPA and the Corps Have Blatantly Misrepresented the Impacts of Increased Clean Water Act Jurisdiction.**

EPA and the Corps have attempted to downplay the substantial outcry over the proposed "waters of the United States" rule as well as the prospect of federalizing thousands of ditches, ponds, streams, and other waterbodies. They have done so by claiming that the impacts associated with increased Clean Water Act jurisdiction are insignificant.

For example, EPA claims the proposed rule "would not infringe on private property rights," and that the Clean Water Act "is not a barrier to economic development."[8] The Corps has also stated that "when privately-owned aquatic areas are subject to Clean Water Act jurisdiction . . . [that] results in little or no interference with the landowner's use of his or her land."[9]

These assertions strain credulity. Given the history of regulatory and land use issues associated with the Clean Water Act (including numerous congressional hearings, Supreme Court cases, and real world examples of costs and hardship resulting from affirmative jurisdictional determinations), it is astonishing that any federal agency would claim that a designation of private property as "waters of the United States" does not affect the landowner's property rights.

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[6] Chris Adams, *EPA Sets Out to Explain Water Rule That's Riled U.S. Farm Interests*, NEWS & OBSERVER (July 9, 2014), http://www.newsobserver.com/2014/07/09/3995009/epa-sets-out-to-explain-water.html.

[7] Letter from J. Mark Ward, Senior Policy Analyst and General Counsel, Utah Assoc. of Counties, to Gina McCarthy and Bob Perciasepe, U.S. Environmental Protection Agency (July 18, 2014), available at http://www.kfb.org/Assets/uploads/images/capitolgovernment/utahassocofcountiesepa71814.pdf.

[8] U.S. Environmental Protection Agency, *Facts About the Waters of the U.S. Proposal*, http://www2.epa.gov/sites/production/files/2014-09/documents/facts_about_wotus.pdf.

[9] *Finding Cooperative Solutions to Environmental Concerns with the Conowingo Dam to Improve the Health of the Chesapeake Bay: Hearing Before the Subcomm. on Water and Wildlife of the S. Comm. on Environment & Public Works*, 113 Cong. 19 (2014) (Corps response to question for the record, on file with Senator David Vitter).

That such statements have come from EPA and the Corps suggests that the agencies either don't appreciate the real-world impacts of the law they're charged with administering, or they are intentionally trying to minimize the effect of the proposed rule. It is likewise not surprising that SBA, an expert agency charged with representing the views of small entities before federal agencies and Congress, has also critiqued the manner in which EPA and the Corps have estimated the proposed rule's impacts.[10]

Bias Factor #5: EPA's Social Media Advocacy in Favor of the Proposed "Waters of the United States" Rule Prejudices the Rulemaking Process.

EPA staff are asking the public to influence the agency's view of the proposed "waters of the United States" rule. In fact, the Twitter account for EPA's Office of Water is now essentially a lobbyist for the proposed rule. A few months ago, EPA established a website called "Ditch the Myth," which declares that the proposed rule "clarifies protection under the Clean Water Act for streams and wetlands that form the foundation of the nation's water resources."[11] The agency has now gone so far as to solicit others to seek to influence EPA regarding the proposed rule, urging social media users to "show their support for clean water and the agency's proposal to protect it."[12] These actions raise serious questions about compliance with the Anti-Lobbying Act.[13]

The integrity of the rulemaking process is in jeopardy, if not already tainted. EPA's social media advocacy removes any pretense that the agency will act as a fair and neutral arbiter during the rulemaking. Why should any landowner believe that EPA will seriously and meaningfully examine adverse comments regarding the proposed rule's impact on ditches, for example, when the agency has already pronounced that the proposed rule "reduces regulation of ditches"?[14] Why should state officials believe that their concerns with the proposed rule will be fully considered, when EPA has already determined that the proposed rule "fully preserves and respects the effective federal-state partnership . . . under the Clean Water Act"?[15]

EPA's social media advocacy is a firm indicator that adverse comments will receive scant attention during the rulemaking period. We question whether the "waters of the United States" rulemaking can be conducted in accordance with the Administrative Procedure Act and its objective that agencies "benefit from the expertise and input of the parties

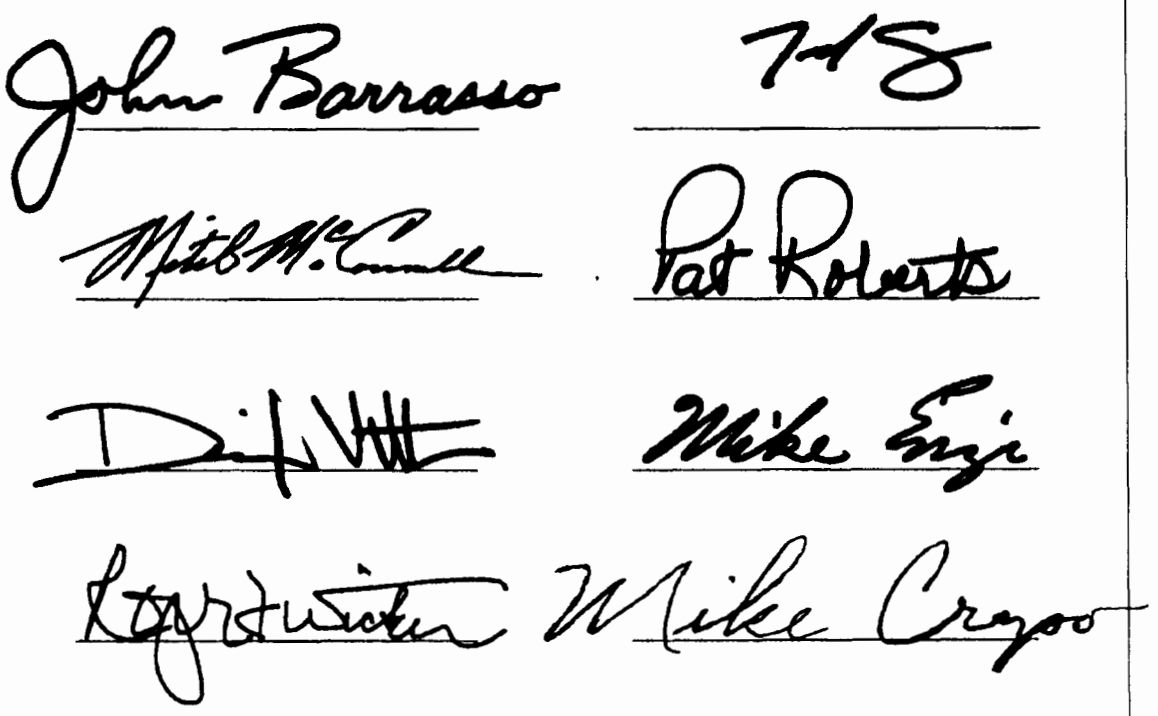
[10] *See* SBA Letter, *supra* n.1.
[11] DITCH THE MYTH, http://www2.epa.gov/uswaters/ditch-myth.
[12] U.S. Environmental Protection Agency, *Water Headlines for the Week of September 9, 2014*, http://water.epa.gov/aboutow/ownews/waterheadlines/May-6-2014-Issue.cfm.
[13] *See* 18 U.S.C. § 1913 (prohibiting the use of appropriated federal funds for the "personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation").
[14] *See* DITCH THE MYTH, *supra* note 11.
[15] *See id.*

who file comments with regard to [a] proposed rule" and "maintain a flexible and open minded attitude towards its own rules." [16]

We are dismayed that the Administration has failed to adhere to its impartial obligations under the law. Moreover, this bias has been reflected in comments from NGOs as well. Based on similar statements from groups such as Organizing for Action, Natural Resources Defense Council, and Clean Water Action, it is as though the Administration and its environmentalist allies are of one mindset, eager to paint the proposed rule's critics as anything other than concerned citizens.

At the same time, although the above groups are entitled to have a misguided and flawed perspective on the proposed "waters of the United States" rule, the Administration owes the American people a higher level of discourse. To date, however, this rulemaking has been plagued by administrative bias and prejudicial grandstanding. It is therefore incumbent on EPA and Corps to reverse course, withdraw the proposed rule, and commit to working more cooperatively with interested stakeholders in future regulatory proceedings.

Sincerely,



[16] *McClouth Steel Prod. Corp. v. Thomas*, 838 F.2d 1317, 1325 (D.C. Cir. 1988) (interpreting 5 U.S.C. § 553; internal quotations omitted). *See also* Letter from Waters Advocacy Coalition to EPA Administrator Gina McCarthy and Secretary of the Army John M. McHugh re: Proposed Rule to Define "Waters of the United States" (Sept. 29, 2014) ("The [Administrative Procedure Act] does not allow [EPA and the Corps] to keep altering the regulatory landscape throughout the rulemaking process. Indeed, the public cannot be expected to provide meaningful comment on a moving target."), available at http://www.fb.org/tmp/uploads/wacletter092914.pdf.


Marco Rubio

15-000-2011

Congress of the United States
Washington, DC 20515

November 13, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable John M. McHugh
Secretary of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

Dear Administrator McCarthy and Secretary McHugh,

We write to provide comments on the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers' (Corps) proposed rule regarding the definition of "waters of the United States" under the Clean Water Act (Docket ID No. EPA-HQ-OW-2011-0880). We have previously called on EPA and the Corps to withdraw the proposed rule due to the hardship it would create for homeowners, small businesses, and local communities.

In this letter, as the chairmen and ranking members of congressional committees and subcommittees charged with overseeing the federal government's compliance with the Clean Water Act and the Constitution, we wish to formally object to the proposed "waters of the United States" rule's disregard for federalism and the constitutional and statutory limitations on EPA's and the Corps' jurisdiction over "navigable waters." The proposed rule contemplates an extra-constitutional relationship between the federal government and the States in the regulation of local land-use matters. Thus, the proposed rule subverts the Constitution, Congress, as well as the Clean Water Act's promise to "recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources."[1]

Despite the constitutional and statutory limits which bind EPA and the Corps, the proposed "waters of the United States" rule provides essentially no limit to federal regulatory authority under the Clean Water Act. As such, the proposed rule presents a grave threat to Americans' property rights, and its finalization will force landowners throughout the country to live with the unending prospect that their homes, farms, or communities could be subject to ruinous Clean Water Act jurisdictional determinations and litigation.

EPA and the Corps must abandon the proposed "waters of the United States" rule if the Clean Water Act is to be administered consistent with federalism, the Constitution's limits on the federal government's Commerce Clause jurisdiction over "navigable waters," and the statutory limits contained in the Clean Water Act. We appreciate your review of these comments and the reasoning behind our recommendation to withdraw the proposed rule.

[1] Federal Water Pollution Control Act § 101(b), 33 U.S.C. § 1251(b).

I. The Proposed "Waters of the United States" Rule Contravenes the Constitution's Federalism Structure and Provides No Limit to Federal Authority Under the Clean Water Act.

In considering the proper relationship between the federal government and the States, the Framers of the Constitution determined that federalism would serve as a guiding principle. The Framers' purpose was to guarantee that States and their citizens could control their own destiny, in contrast to a government in which local initiative might be impeded by an overbearing federal bureaucracy.[2]

James Madison expounded on this structural idea in The Federalist No. 45, observing that the powers "delegated by the proposed Constitution to the federal government, are few and defined," and "[t]hose which are to remain in the State governments are numerous and indefinite."[3] Whereas the federal government's powers were to be exercised primarily over matters concerning war, peace, and foreign commerce, the powers "reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and internal order, improvement, and prosperity of the State."[4] Thus, federalism "serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-à-vis one another," preserving the "integrity, dignity and residual sovereignty of the States."[5]

Importantly, federalism protects state sovereignty as well as individual liberty. "State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."[6] It "protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions. By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power."[7]

Congress explicitly recognized federalism's importance when it enacted the Clean Water Act in 1972.[8] Congress likewise restricted the EPA's and Corps' authority by predicating Clean Water Act jurisdiction on the presence of "navigable waters," defined as "the waters of the United States, including the territorial seas."[9] Furthermore, because the Clean Water Act is a Commerce Clause enactment, EPA's and the Corps' administration of the law must be constrained and reflect effective bounds to federal regulatory authority.[10] Accordingly, the reach of the "waters of the United States" is inextricably tied to the statute's limiting term, "navigable waters," and

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[2] *See Bond v. United States*, 131 S. Ct. 2355, 2364 (2011) (Federalism "allows States to respond . . . to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power.").
[3] THE FEDERALIST No. 45, at 311 (James Madison) (Easton Press 1979).
[4] *Id.*
[5] *Bond*, 131 S. Ct. at 2364.
[6] *New York v. United States*, 505 U.S. 144, 181 (1992) (internal quotations and citation omitted).
[7] *Bond*, 131 S. Ct. at 2364.
[8] *See* Federal Water Pollution Control Act § 101(b), 33 U.S.C. § 1251(b).
[9] *See* 33 U.S.C. § 1362(7).
[10] *See United States v. Morrison*, 529 U.S. 598, 608 (2000).

"may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them . . . would effectively obliterate the distinction between what is national and what is local and create a completely centralized government."[11]

EPA and the Corps' proposed "waters of the United States" rule is irreconcilable with these principles. Under the proposed rule, virtually any parcel of land containing a water feature may be deemed a "water of the United States." Rather than preserve the prerogative of the States to manage purely local waterbodies, the proposed rule would centralize the regulation of streams, lakes, ponds, and ditches. As such, the proposed rule represents a dangerous effort by EPA and the Corps to achieve "a significant impingement of the States' traditional and primary power over land and water use."[12]

A. The Proposed "Waters of the United States" Rule's Categorical and Case-by-Case Jurisdictional Provisions Eliminate the Distinction Between Local and National Waterbodies.

Three provisions in the proposed rule's text, as well as EPA's draft report on the connectivity of streams and wetlands to downstream waters, demonstrate that EPA and the Corps are seeking extraordinary authority to classify wholly local waterbodies as "waters of the United States."

i. "Tributaries" as "Waters of the United States"

The proposed "waters of the United States" rule designates "tributaries" as jurisdictional *per se*.[13] "Tributary," however, does not mean "a stream feeding a larger stream or a lake," as one would understand this term in normal parlance.[14] Instead, EPA and the Corps have proposed a sweeping definition for "tributary"[15]:

- Under the proposed rule, "tributary" means "a water physically characterized by the presence of a bed and banks and ordinary high water mark [(OHWM)] . . . which contributes flow, either directly or through another water" to a traditionally navigable water (TNW), an interstate water, territorial sea, or impoundment. On its face, this definition reaches water features far removed from TNW's and other truly national waters. The term's emphasis on mere flow from one water feature to a downstream water will bring countless perennial, intermittent, and ephemeral streams within the definition of "waters of the United States," and the agencies concede as much.[16]

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[11] *Id.* (internal quotations and citation omitted).
[12] *Solid Waste Agency of Northern Cook County v. USACE*, 531 U.S. 159, 174 (2001).
[13] Definition of "Waters of the United States" Under the Clean Water Act, 79 Fed. Reg. 22188, 22262-22263 (proposed April 21, 2014) (hereinafter, "Proposed Rule").
[14] *See* WEBSTER'S NEW COLLEGIATE DICTIONARY 1238 (Merriam-Webster 1979).
[15] *See* Proposed Rule, 79 Fed. Reg. at 22263.
[16] *See id.*, 79 Fed. Reg. at 22206 (discussing definition of "tributary" as-applied to headwaters, intermittent, and ephemeral streams).

- Landowners will face a significant challenge in determining whether a water is "physically characterized by the presence of a bed and a banks and [OHWM]." In making this determination, they must keep in mind that the Corps' prior OHWM assessments have "extended 'the waters of the United States' to virtually any land feature over which rainwater or drainage passes and leaves a visible mark—even if only the presence of litter and debris."[17]

- If water can be traced from a TNW upstream to a local wetland, lake, or pond, that alone is sufficient to bring these water features within the definition of "tributary," even if they lack a bed and banks or OHWM. This standard puts those who own land containing wetlands, lakes, or a pond on notice that their property will likely constitute "waters of the United States" if the proposed rule is finalized.

- EPA and the Corps confirm the broad scope of the term, "tributary," by noting that it can include a natural, man-altered, or man-made water and includes rivers, streams, lakes, ponds, impoundments, canals, and (with limited exceptions) ditches.

ii. "Adjacent" Waters as "Waters of the United States"

The proposed "waters of the United States" rule also deems "[a]ll waters, including wetlands, adjacent to" TNW's, interstate waters, territorial seas, impoundments, and tributaries as jurisdictional *per se*.[18] Similar to "tributary," "adjacent waters" is defined broadly so as to provide EPA and the Corps with significant jurisdictional authority:

- "Adjacent" is defined to mean "bordering, contiguous or neighboring," but the subsequent definition of "neighboring" reveals the agencies' intention to encompass much more than adjoining waters.

- "Neighboring" waters include "waters located within the riparian area or floodplain" of TNW's, interstate waters, territorial seas, impoundments, and tributaries, as well as "waters with a shallow subsurface hydrologic connection or confined surface hydrologic connection" to another jurisdictional *per se* water.

    - "Riparian area" means an area "bordering a water where surface and subsurface hydrology directly influence the ecological processes and plant and animal community structure in that area." EPA and the Corps state further that "riparian areas" are "transitional areas between aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems."

[17] *Rapanos v. United States*, 547 U.S. 715, 725 (Scalia, J., plurality opinion) (internal quotations and citation omitted).
[18] Proposed Rule, 79 Fed. Reg. at 22262-22263.

- "Floodplain" means an area "bordering inland or coastal waters that was formed by sediment deposition from such water under present climatic conditions and is inundated during periods of moderate to high water flows."

Undoubtedly, the terms "riparian area" and "floodplain" will be a source of confusion as well as geographic mischief. For example, it is difficult to imagine land where surface or subsurface hydrology *do not* "directly influence the ecological processes and plant and animal community structure," as the term "riparian area" requires. Likewise, many local communities lie in "floodplains" as currently defined in the proposed rule, and therefore could be considered "waters of the United States" in their entirety.

EPA and the Corps have also claimed that "groundwater" is not to be considered "waters of the United States" under the proposed rule.[19] Yet many groundwater-related activities may require Clean Water Act permits because "adjacent waters" includes those "waters with a shallow subsurface hydrologic connection" to other jurisdictional waters. Furthermore, the proposed rule's categorical jurisdiction for waters "adjacent" to (broadly-defined) "tributaries" confirms that EPA and the Corps are seeking immense jurisdictional reach over private land located near wetlands, streams, lakes, rivers, and ponds.[20]

iii. "Other waters" as "Waters of the United States"

As if to ensure that no water feature escapes the regulatory grip of the federal government, EPA and the Corps also propose broad authority to deem "other waters" jurisdictional on a case-by-case basis[21]:

- Under the proposed rule, "other waters, including wetlands" may constitute "waters of the United States," "provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus" to a TNW, interstate water, or territorial sea.

- "Significant nexus" is defined to mean that "a water, including wetlands, either alone or in combination with other similarly situated waters in the region (i.e., the watershed that drains to the nearest [TNW, interstate water, or territorial sea]), significantly affects the chemical, physical, or biological integrity" of a TNW, interstate water, or territorial sea.

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[19] Proposed Rule, 79 Fed. at 22263.

[20] The proposed rule also eliminates the current "waters of the United States" exception for wetlands adjacent to wetlands. *See* 40 C.F.R. § 230.3(s)(7) (the term "waters of the United States" means "[w]etlands adjacent to wetlands (other than waters that are themselves wetlands)"). *See also Great Northwest, Inc. v. United States Army Corps of Engineers*, 2010 U.S. Dist. LEXIS 89132, *26 (D. Alaska 2010) ("[T]he Corps' regulations themselves place wetlands adjacent to jurisdictional wetlands outside the reach of the [Clean Water Act].")

[21] *See* Proposed Rule, 79 Fed. Reg. at 22263.

- "Other waters" are "similarly situated" when they "perform similar functions and are located sufficiently close together to a 'water of the United States' so that they can be evaluated as a single landscape unit with regard to their effect on the chemical, physical, or biological integrity" of a TNW, interstate water, or territorial sea.

The scope of land and water features covered under the "other waters" provision is breathtaking. The use of a "region" or watershed as a basis for jurisdiction will provide EPA and the Corps with limitless authority, since the entire United States lies within some drainage basin.[22] EPA and the Corps purport to constrain the "significant nexus" standard as well as the "significant effect requirement" by indicating that for "an effect to be significant, it must be more than speculative or insubstantial." However, this caveat is meaningless because insubstantial waters may be "combin[ed] with other similarly situated waters in the region" in order to demonstrate a "significant effect."

The proposed rule's authorization for waters to be combined or evaluated in the aggregate "is clever, but has no stopping point."[23] Moreover, the proposed rule removes the requirement in the current "waters of the United States" definition that "other waters" be directly connected to interstate commerce in order to be jurisdictional,[24] further raising the specter that future jurisdictional determinations will often fail to be "in pursuance of Congress' power to regulate interstate commerce."[25]

iv. EPA's Draft *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*

EPA appears eager to put forward a report on the connectivity of streams and wetlands in order to justify the broad regulatory assertions contained in the proposed "waters of the United States" rule.[26] There are major concerns associated with EPA's draft "Connectivity Report,"[27] but the

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[22] *See Rapanos*, 547 U.S. at 722 ("[T]he entire land area of the United States lies in some drainage basin, and an endless network of visible channels furrows the entire surface, containing water ephemerally wherever the rain falls.")

[23] *United States v. Lopez*, 514 U.S. 549, 600 (Thomas, J., concurring).

[24] *See* 40 C.F.R. § 230.3 (authorizing Clean Water Act jurisdiction for "other waters" "the use, degradation or destruction of which could affect interstate or foreign commerce").

[25] *Morrison*, 529 U.S. at 613.

[26] U.S. Environmental Protection Agency, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, Draft (Sept. 13), available at http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/7724357376745F48852579E60043E88C/$File/WOUS_ERD2_Sep2013.pdf.

[27] *See, e.g.*, Letter from Ashley Lyon McDonald (National Cattlemen's Beef Association) and Dustin Van Liew (Public Lands Council) to Ken Kopocis and Jo-Ellen Darcy re: Proposed "Waters of the U.S" Rulemaking at 3 (Oct. 28, 2014) (Docket ID No. EPA-HQ-OW-2011-0880) (noting that EPA's decision to not make final "Connectivity Report" available for public comment "is inappropriate and prevents the public from being able to provide meaningful comments on the proposed rule"); *and* Letter from Board of Douglas County Commissioners to Hon. Gina McCarthy and Hon. Jo-Ellen Darcy re: Proposed "Waters of the U.S." Rulemaking at 3 (Oct. 14, 2014)

fundamental issue is that no amount of study can nullify the Constitution's limits to federal regulatory authority. Although the EPA and Corps' effort to invent scientific support for expanded jurisdiction is creative, jurisdiction under the CWA is a legal exercise not a scientific one.

Indeed, a federal agency may not rely on reasoning that would render the Constitution's enumeration of powers meaningless.[28] However, in the draft "Connectivity Report," EPA engages in precisely this sort of reasoning, asserting that "[a]ll tributary streams, including perennial, intermittent, and ephemeral streams, are physically, chemically, and biologically connected to downstream rivers via channels and associated alluvial deposits where water and other materials are concentrated, mixed, transformed, and transported."[29]

There is no limit to federal regulatory authority under the draft report's approach, which conflicts with the constitutional maxim that "[a]ctivities local in their immediacy do not become interstate and national because of distant repercussions."[30] Accordingly, it is inappropriate for EPA and the Corps to rely on the draft "Connectivity Report" for this rulemaking or other regulatory contexts.

B. The Proposed "Waters of the United States" Rule is a Grave Threat to Individual Liberty and Property Rights.

After examining the proposed rule's definitions for "tributary" and "adjacent waters," as well as the case-by-case standard for "other waters," one is hard pressed to identify any waterbody that would be beyond the reach of EPA and the Corps as "waters of the United States." The import of the proposed rule is clear: all water is national water (unless expressly exempted), and land with only a slight connection to a waterbody is within the regulatory purview of EPA and the Corps.

Federalism serves as an absolute bar to such an expansive proposal. The proposed rule's definitions "pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."[31] Congress did not sanction this approach in the Clean Water Act, and the Constitution forbids it.

The proposed rule's contravention of federalism threatens individual liberty and property rights.[32] By providing EPA and the Corps with virtually unlimited authority under the Clean

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(Docket ID No. EPA-HQ-OW-2011-0880) ("There are significant issues with the current draft Connectivity Report that requires the Agencies' attention before continuing with the rulemaking process.").

[28] *See Morrison*, 529 U.S. at 615.

[29] Draft Connectivity Report at 6-1.

[30] *See A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 554 (Cardozo, J., concurring).

[31] *United States v. Lopez*, 514 U.S. 549, 567 (1995) (majority opinion).

[32] *See Bond*, 131 S. Ct. at 2364 ("Federalism secures the freedom of the individual.") *See also Lynch v. Household*, 405 U.S. 538, 552 (1972) ("[A] fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized.") (citing J. Locke, Of Civil Government 82-85 (1924); J. Adams, A Defence of the

Water Act, it would force those who wish to build a home, expand a small business, or increase their crop production to obtain the blessing of the federal government. Landowners will have to decide whether to spend up to two years and $270,000 in a burdensome and uncertain permitting process,[33] or proceed without a federal permit and run the risk that EPA could seek fines of up to $187,500 per day for alleged Clean Water Act violations.[34] Stated differently, the proposed rule would "put the property rights of ordinary Americans entirely at the mercy of [EPA] employees."[35]

This disregard for federalism is unacceptable. EPA and the Corps flouted their duty to abide by the limits established by the Framers,[36] dubiously concluding that the proposed "waters of the United States" rule "will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."[37] The agencies' assertion is fundamentally at odds with the reality that the proposed rule sanctions the federal regulation of what rightly and legally must be considered purely local land and water features.

We recommend that EPA and the Corps take heed of the following admonition: "Impermissible interference with state sovereignty is not within the enumerated powers of the National Government, and action that exceeds the National Government's enumerated powers undermines the sovereign interests of the States."[38] As a matter of federalism and constitutional governance, the proposed rule must be abandoned.

Constitutions of Government of the United States of America, in F. Coker, Democracy, Liberty, and Property 121-132 (1942); 1 W. Blackstone, Commentaries *138-140).

[33] *See Rapanos v. United States*, 547 U.S. 715, 721 (2006) (plurality opinion).

[34] *See* Letter from Senator David Vitter, et al. to Hon. Nancy Stoner, U.S. Environmental Protection Agency (April 1, 2014), available at http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=4bfeda20-e563-449e-bb86-30e5eefead8b.

[35] *Sackett v. EPA*, 132 S. Ct. 1367, 1375 (2012) (Alito, J., concurring).

[36] *United States v. Lopez*, 514 U.S. 549, 578 (1995) (Kennedy, J., concurring) ("[I]t is the obligation of all officers of the Government to respect the constitutional design.").

[37] Proposed Rule, 79 Fed. Reg. at 22220-22221.

[38] *Bond*, 131 S. Ct. at 2366 (citations omitted).

II. The Proposed "Waters of the United States" Rule is an End-Run Around Supreme Court Decisions Which Have Confirmed the Constitutional and Statutory Limits to Clean Water Act Jurisdiction.

When Congress passed the Clean Water Act in 1972, it predicated federal jurisdiction on the presence of "navigable waters."[39] Congress further defined "navigable waters" to mean "the waters of the United States, including territorial seas," expressly referencing the former term in the statute's various regulatory programs.[40] In so doing, Congress evidenced its desire that navigability would serve as a foundational concept for Clean Water Act jurisdiction.

The Clean Water Act's legislative history illustrates Congress's intent to ground federal jurisdiction in navigability. Although "waters of the United States" provided a "new and broader definition" for the term "navigable waters," the purpose of this new definition was to align the statute with the understanding that "there is no requirement in the Constitution that the waterway must cross a State boundary in order to be within the interstate commerce power of the Federal Government."[41] Under the new definition of "navigable waters" as "waters of the United States," navigability would remain critical to jurisdictional inquiries, but interstate concerns less so:

> [I]t is enough that the waterway serves a link in the chain of commerce among the States as it flows in the various channels of transportation—highways, railroads, air traffic, radio and postal communications, waterways, et cetera. The "gist of the Federal test" is the waterway's use "as a highway," not whether it is "part of a navigable interstate or international commercial highway."[42]

Thus, Congress "was clear that the [Clean Water Act] was anchored by the concept of navigability."[43]

The Supreme Court has confirmed that the term "navigable waters" constrains EPA's and the Corps' authority to regulate discharges into "waters of the United States." In *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (*SWANCC*), the Court held that isolated, nonnavigable ponds were beyond the agencies' statutory authority under the Clean Water Act.[44] And in *Rapanos v. United States*, a majority of the Court rejected the Corps' attempt to designate wetlands located near drainage ditches as "waters of the United States."[45] These cases underscored that "[t]he term 'navigable' has at least the import of

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[39] In general, the Clean Water Act prohibits the unauthorized discharge of pollutants, and defines "discharge of a pollutant" to mean "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
[40] *See* 33 U.S.C. § 1362(7).
[41] 118 Cong.Rec. 33756-57 (1972) (statement of Rep. Dingell).
[42] *Id.* (quoting *Utah v. United States*, 403 U.S. 9, 11 (1971)) (other internal citation omitted).
[43] *The Clean Water Act Following the Recent Supreme Court Decisions in* Solid Waste Agency of Northern Cook County *and* Rapanos-Carabell*: Hearing Before the S. Comm. on Environment and Public Works*, 110th Cong. 44 (2007) (statement of George J. Mannina, Jr.).
[44] *Solid Waste Agency of Northern Cook County v. USACE* (*SWANCC*), 531 U.S. 159 (2001).
[45] *Rapanos v. United States*, 547 U.S. 715 (2006).

showing . . . what Congress had in mind as its authority for enacting the [Clean Water Act]: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."[46]

The proposed "waters of the United States" rule defies the Supreme Court's recognition of the statutory limits Congress placed upon the agencies. In fact, **the proposed rule would reach the very waterbodies in *SWANCC* and *Rapanos* over which EPA and the Corps had unlawfully asserted Clean Water Act jurisdiction.**

For example, in *SWANCC*, the Corps had asserted jurisdiction over small ponds at an abandoned gravel pit. But as the Supreme Court explained, nothing in the Clean Water Act's text or the statute's legislative history suggested that the term "waters of the United States" included nonnavigable, isolated waterbodies like the ponds.[47] The Court observed further that in order to uphold the Corps' interpretation, "we would have to hold that the jurisdiction of the Corps extends to ponds that are *not* adjacent to open water. But we conclude that the text of the statute will not allow this."[48] Accordingly, the Court held that the Corps exceeded its statutory authority in claiming that the isolated, nonnavigable ponds were jurisdictional.[49]

Remarkably, and notwithstanding *SWANCC*, the proposed "waters of the United States" rule purports to provide ample authority for EPA and the Corps to assert Clean Water Act jurisdiction over the isolated, nonnavigable waters at issue in the Court's decision. The proposed rule indicates that "waters with a shallow subsurface hydrologic connection" to another jurisdictional water are "adjacent" waters and thus "waters of the United States" *per se*.[50] The *SWANCC* ponds and project site were connected to groundwater and located in an area with a documented groundwater connection to the Fox River.[51] Therefore, applying the proposed rule's broad definition for "adjacent" waters, the *SWANCC* ponds and project site would automatically qualify as "waters of the United States" under the proposed rule.

The proposed rule would also authorize EPA and the Corps to designate the ponds and project site as "waters of the United States" under the proposal's "other waters" provision. Under this provision, a waterbody may be considered a jurisdictional "other water" if "those waters alone, or in combination with other similarly situated waters . . . located in the same region, have a significant nexus" to a TNW, interstate water, or territorial sea.[52] Because the proposed rule would authorize isolated, nonnavigable waterbodies to be "combin[ed] with other similarly situated waters in [a] region" in order to satisfy the proposal's "significant nexus" standard, it

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[46] *SWANCC*, 531 U.S. at 172.
[47] *See id.* at 167-169 & 168 n.3.
[48] *Id.* at 168.
[49] *Id.* at 174.
[50] Proposed Rule, 79 Fed. Reg. at 22263.
[51] *See Solving the Problem of Polluted Transportation Infrastructure Stormwater Runoff: Hearing Before the Subcomm. of Water and Wildlife of the S. Comm. on Environment & Public Works*, 113 Cong. __ (2014) (response of J. G. Andre Monette to question for the record, on file with Senator David Vitter).
[52] Proposed Rule, 79 Fed. Reg. at 22263.

would be practically impossible for the *SWANCC* ponds and project site to escape the prospect of EPA or the Corps once again classifying them as "waters of the United States."[53]

EPA and the Corps attempt to limit *SWANCC* to its discussion of the Migratory Bird Rule, appearing to recognize that the proposed rule would result in "waters of the United States" jurisdiction for the *SWANCC* ponds and project site. In the executive summary to the proposed rule, the agencies opine that *SWANCC* "held that the use of 'isolated' nonnavigable intrastate ponds by migratory birds was not *by itself* a sufficient basis for the exercise of Federal authority under the [Clean Water Act]."[54] Similarly, in recent correspondence with members of the Senate Environment and Public Works Committee, EPA claims that the proposed rule "is consistent with [*SWANCC*] and precludes establishing [Clean Water Act] protections for waters based solely on the presence of migratory birds."[55]

These statements suggest that EPA and the Corps believe the Migratory Bird Rule was the only flaw in *SWANCC*, and that other arguments, theories, or information could have saved the day for the government. Yet a fair reading of the Court's decision belies the agencies' myopic viewpoint. The Court in *SWANCC* repeatedly emphasized that its concern was not with the Migratory Bird Rule as such, but the fact that application of the rule resulted in a "waters of the United States" designation over property that was categorically beyond the agency's statutory authority.[56] The Court held that the Corps lacked authority over isolated, nonnavigable ponds because it "read the statute as written."[57] The fact that the asserted jurisdiction had resulted from application of the Migratory Bird Rule was incidental and irrelevant to the Court's decision.

The proposed rule's coverage of the remote wetlands at issue in *Rapanos* is no less disconcerting. In that case, the wetlands were near ditches and man-made drains, which in turn were located 11 to 20 miles from the nearest TNW. The Corps nonetheless claimed that the wetlands were "waters of the United States," and the Sixth Circuit agreed based on its conclusion that Clean Water Act jurisdiction could be "satisfied by the presence of a hydrologic connection" between a remote wetland and TNW.[58]

The Supreme Court rejected this broad theory of Clean Water Act jurisdiction. Writing for the plurality, Justice Scalia determined that "only those wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right so that there is no demarcation between 'waters' and wetlands, are 'adjacent to' such waters and covered by the [Clean Water Act]."[59] In contrast, wetlands "with only an intermittent, physically remote

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[53] *Id.*
[54] *Id.* at 22191 (emphasis added).
[55] Letter from Kenneth J. Kopocis, Deputy Assistant Administrator, U.S. Environmental Protection Agency to Hon. David Vitter (Oct. 29, 2014).
[56] *See SWANCC*, 531 U.S. at 168 ("In order to rule for respondents here, we would have to hold that the jurisdiction of the Corps extends to ponds that are *not* adjacent to open water. But we conclude that the text of the statute will not allow this."), 174 ("[W]e find nothing approaching a clear statement from Congress that it intended § 404(a) to reach an abandoned sand and gravel pit such as we have here.").
[57] *Id.* at 174.
[58] *United States v. Rapanos*, 376 F.3d 629, 639 (6th Cir. 2004).
[59] *Rapanos v. United States*, 547 U.S. 715, 742 (2006) (plurality opinion).

hydrologic connection to 'waters of the United States'" were not jurisdictional under the plurality approach.[60]

Justice Kennedy likewise dismissed an interpretation of "waters of the United States" that would "permit federal regulation whenever wetlands lie alongside a ditch or drain, however remote and insubstantial, that eventually may flow into traditional navigable waters."[61] In his concurring opinion, Justice Kennedy concluded that "[w]hen the Corps seeks to regulate wetlands adjacent to navigable-in-fact waters, it may rely on adjacency to establishing its jurisdiction."[62] But, Justice Kennedy continued, if a wetland is not adjacent to a TNW, "the Corps must establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands based on adjacency to nonnavigable tributaries."[63] The Justice remarked further that wetlands "possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'"[64]

Taken together, Justice Scalia's and Justice Kennedy's opinion squarely preclude EPA and the Corps from asserting categorical Clean Water Act jurisdiction over wetlands based on a mere hydrologic connection to a TNW. Yet the proposed "waters of the U.S." rule adopts precisely this approach: under the proposed rule, a "tributary" is jurisdictional *per se*, and includes wetlands "if they contribute flow, either directly or through another water" to a TNW, interstate water, or territorial seas.[65] In *Rapanos*, there was no dispute that the wetlands contributed flow to a TNW, meaning that the wetlands at issue in that case would automatically become "waters of the U.S." under the proposed rule.[66]

Notably, although the proposed "waters of the U.S." rule relies heavily on Justice Kennedy's opinion in particular, EPA and the Corps have distorted his approach. For instance, Justice Kennedy suggested that the agencies "may choose to identify categories of tributaries that, due to their volume of flow[,] their proximity to navigable waters, or other relevant considerations, are significant enough that wetlands adjacent to them are likely . . . to perform important functions for an aquatic systems incorporating navigable waters."[67] In no way, however, does this suggestion imply that EPA and the Corps could identify *wetlands themselves* as tributaries, as they have done in the proposed rule.[68] Moreover, the tributary definition proposed by the agencies would sanction the federal regulation of "drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes toward it," despite Justice Kennedy's warning against such a standard.[69]

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[60] *Id.*
[61] *Rapanos v. United States*, 547 U.S. at 778 (Kennedy, J., concurring).
[62] *Id.* at 782.
[63] *Id.*
[64] *Id.* at 780.
[65] Proposed Rule, 79 Fed. Reg. at 22262-22263.
[66] *See United States v. Rapanos*, 376 F.3d at 642-643.
[67] *Rapanos v. United States*, 547 U.S. at 780-781 (Kennedy, J., concurring).
[68] *See* Proposed Rule, 79 Fed. Reg. at 22263.
[69] *Rapanos*, 547 U.S. at 781.

The proposed "waters of the United States" rule also indicates that its "significant nexus" standard may be satisfied if a water alone or in combination with similarly situated waters "significantly affects the chemical, physical, or biological integrity" of a TNW, interstate water, or territorial sea.[70] Yet Justice Kennedy's opinion makes clear that there must be a significant effect to the chemical, physical, *and* biological integrity of a downstream water in order for the significant nexus standard to be satisfied.[71] The current proposal is far afield from even Justice Kennedy's tailored analysis.

EPA and the Corps to proposal to assert "waters of the United States" jurisdiction over the types of waterbodies at issue in *SWANCC* and *Rapanos* is as astonishing as it is alarming. Worse yet, it demonstrates that the agencies have not learned from the Supreme Court's direction that statutory limits contained in the Clean Water Act must be honored. EPA and the Corps should withdraw the proposed rule as recognition of the infringement upon federalism and liberty the rule would impose.

Conclusion

EPA and the Corps' decision to engage in a "waters of the United States" rulemaking presented the agencies with a significant opportunity to honor the limited authority granted to the executive branch in the Clean Water Act. In examining the law's key jurisdictional provision, the agencies should have reflected the statutory limits established by Congress as well as the Supreme Court's decisions in *SWANCC* and *Rapanos*.

The agencies have failed to take advantage of this opportunity. The proposed "waters of the United States" rule undermines the text of the Clean Water Act and misconstrues Supreme Court precedent. In addition, the proposed rule is antithetical to the Constitution's guarantee of federalism.

For these reasons, we strongly urge EPA and the Corps to withdraw the proposed "waters of the United States" rule.

Sincerely,

Sen. David Vitter
Ranking Member
Senate Committee on
Environment and Public Works

Rep. Bill Shuster
Chairman
House Committee on
Transportation and Infrastructure

[70] Proposed Rule, 79 Fed. Reg. at 22263.
[71] *See Rapanos*, 547 U.S. at 780.

Sen. Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary

Rep. Bob Goodlatte
Chairman
House Judiciary Committee

Sen. James M. Inhofe
Ranking Member
Subcommittee on Oversight
Senate Committee on Environment and Public Works

Rep. Bob Gibbs
Chairman
Subcommittee on
Water Resources and Environment
House Committee on Transportation
and Infrastructure

Sen. John Boozman
Ranking Member
Subcommittee on Water and Wildlife
Senate Committee on Environment and Public Works

Rep. Spencer Bachus
Chairman
Subcommittee on
Regulatory Reform, Commercial and
Antitrust Law
House Judiciary Committee

Sen. Orrin Hatch
Ranking Member
Subcommittee on Oversight,
Federal Rights and Agency Actions
Senate Committee on the Judiciary

Sen. Ted Cruz
Ranking Member
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Committee on the Judiciary

DEC 22 2014

The Honorable Ted Cruz
Ranking Member
Subcommittee on the Constitution, Civil Rights
and Human Rights
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Cruz:

Thank you for your November 13, 2014, letter to the U.S. Environmental Protection Agency and the U.S. Department of the Army regarding the EPA's and the U.S. Department of the Army's proposed rulemaking to define the scope of the Clean Water Act consistent with science and the decisions of the Supreme Court. The agencies' current rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

We appreciate the comments you have provided on our proposed rule. We are including your letter in the official docket for the proposed rule, identified by Docket ID EPA-HQ-OW-2011-0880 at http://www.regulations.gov. We will carefully consider your comments and all comments received on the proposed rule when deciding what changes to make to the final rule.

We appreciate your concern regarding the importance of working effectively with the public as the rulemaking process moves forward. We are actively working to respond to this critical issue. In order to afford the public greater opportunity to benefit from the EPA Science Advisory Board's reports on the proposed jurisdictional rule and on the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," and to respond to requests from the public for additional time to provide comments on the proposed rule, the agencies extended the public comment period on the proposed rule to November 14, 2014.

During the public comment period, the agencies met with stakeholders across the country to facilitate their input on the proposed rule. We talked with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. In October 2014, the EPA conducted a second small business roundtable to facilitate input from the small business community, which

featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies recently completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy.

Thank you again for your letter. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact us if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836, or Mr. Chip Smith in the Office of the Assistant Secretary of the Army (Civil Works) at charles.r.smith567.civ@mail.mil or (703) 693-3655.

Sincerely,

Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
U.S. Department of the Army

Kenneth J. Kopocis
Deputy Assistant Administrator for Water
U.S. Environmental Protection Agency